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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

AIDS HEALTHCARE FOUNDATION,

Petitioner,

v.

CITY OF LOS ANGELES; ERIC GARCETTI,
in his capacity as Mayor of the City of Los
Angeles; LAURA GUGLIELMO, in her capacity
as Executive Director of the Los Angeles
Housing+Community Investment Department;
and DOES 1 through 10, inclusive,

Respondents.

Case No. 19STCP04532

**AMENDED VERIFIED PETITION
FOR WRIT OF MANDATE, AND
ADMINISTRATIVE WRIT**

(Code Civ. Proc. §§ 1085, 1086 and
1094.5)

Complaint Filed: October 21, 2019
Trial Date: None Set
Department: 85
Judge: Hon. James C. Chalfant

1 Petitioner AIDS Healthcare Foundation (“AHF”) petitions this court for a writ of
2 mandate directed to the City of Los Angeles, Eric Garcetti, in his capacity as Mayor of the City
3 of Los Angeles, and Laura Guglielmo, in her capacity as Executive Director of the Los Angeles
4 Housing+Community Investment Department (collectively referred to as “City of Los Angeles”
5 or the “City”), and alleges as follows:

6 **INTRODUCTION**

7 1. AHF brings this action to require City of Los Angeles to follow the requirements
8 of the City of Los Angeles Administrative Code for procuring services through a competitive
9 bidding process related to its Proposition HHH Housing Challenge Request for Proposals (the
10 “RFP”). City of Los Angeles Administrative Code section 10.15 *et. seq.* requires City of Los
11 Angeles to follow a fair competitive bidding process to ensure that proposals are properly
12 evaluated and that awards of City funds are made to proposals that are most advantageous to the
13 City. The City of Los Angeles’ failure to abide by the competitive bidding requirements under
14 its own regulations resulted in AHF being denied access to City funds despite submitting a
15 proposal clearly advantageous to the City.

16 **PARTIES**

17 2. Petitioner AIDS HEALTHCARE FOUNDATION is a California nonprofit
18 corporation doing business as Healthy Housing Foundation (“HHF”) which provides decent
19 housing units at an affordable cost to low-income people, including families with children, and
20 those previously unsheltered or homeless. HHF offers priority placement to individuals with
21 chronic health conditions, including HIV/AIDS.

22 3. Respondent CITY OF LOS ANGELES.

23 4. Respondent ERIC GARCETTI is the Mayor of the City of Los Angeles.

24 5. Respondent LAURA GUGLIELMO is the Executive Director of the Los Angeles
25 Housing+Community Investment Department.

26 6. Petitioners are unaware of the true names and capacities of Respondents DOES 1
27 through 10, inclusive, and they are therefore sued by such fictitious names pursuant to Code of
28 Civil Procedure section 474. Petitioners allege on information and belief that each such fictitiously

1 named Respondent/Defendant is responsible or liable in some manner for the events and
2 happenings referred to herein, and Petitioners will seek leave to amend this Complaint to allege
3 their true names and capacities after the same have been ascertained.

4 **JURISDICTION AND VENUE**

5 7. This Court has original jurisdiction over this matter pursuant to article VI, section
6 10 of the California Constitution and sections 1085, 1086, and 1094.5 of the Code of Civil
7 Procedure.

8 8. Venue is proper in the County of Los Angeles pursuant to Code of Civil
9 Procedure section 394 in that Respondents are governmental representatives of the City of Los
10 Angeles, a subdivision of the County of Los Angeles.

11 **GENERAL ALLEGATIONS**

12 **The Procurement Process for the RFP Must Comply with City Regulations**

13 9. On May 9, 2019, the Los Angeles Housing+Community Investment Department
14 (“HCIDLA”), in conjunction with the city of Los Angeles Mayor’s Office, issued a Proposition
15 HHH Housing Challenge Request for Proposals (the “RFP”) with the goal of identifying
16 innovative housing production and/or financial models that can produce supportive and/or
17 affordable units with funding from Proposition HHH (“Prop HHH”). (Attached as **Exhibit “A”** is
18 a true and correct copy of the RFP and its various addendums issued by HCIDLA.)

19 10. On or about June 10, 2019, AHF submitted a timely proposal to HCIDLA
20 detailing AHF’s qualifications and requesting a Subordinate Loan in the amount of \$24,800,00 to
21 construct between 248-262 units of permanent supportive housing for single adults and older
22 adults, including LGBTQ individuals and persons living with chronic health conditions, in the
23 Skid Row area of Los Angeles.

24 11. AHF’s proposal demonstrated that the organization focuses on a quick and
25 inexpensive model of adaptive reuse. As of the end of 2018, AHF already owned and operated
26 approximately 600 affordable housing units in Southern California and is developing affordable
27 housing across 15 acres of land in South Florida. Additionally, AHF affiliate organizations
28 provide a range of housing resources and placements to over 500 individuals and families across

1 the United States each year. AHF's housing efforts in the Los Angeles area include Single
2 Room Occupancy (SRO) accommodations at three properties and Emergency Family Housing at
3 fourth location.

4 12. On or about August 22, 2019, AHF received notification from HCIDLA that the
5 City declined AHF's proposal, indicating that the final score for AHF's proposal had been
6 calculated as 63 out of 100 possible points, which did not meet the minimum score requirement
7 of 75 points to be considered for funding. (Attached as **Exhibit "B"** is a true and correct copy of
8 the August 22, 2019 correspondence from HCIDLA to AHF.)

9 13. The City of Los Angeles received 19 applications for funding in response to the
10 RFP. As part of the RFP process, HCIDLA, the Mayor's Office, and a panel of judges reviewed
11 all the proposals and assigned points scores to each proposal. The final point score assigned to
12 each proposal was used by the City to make recommendations for funding/support.

13 14. On August 27, 2019, AHF filed a timely appeal of the City's decision to deny
14 AHF's application pursuant to the express terms of the RFP, alleging that the RFP review and
15 scoring process was flawed and that resulting recommendations were arbitrary and capricious.
16 (Attached as **Exhibit "C"** is a true and correct copy of AHF's August 27, 2019 appeal submitted
17 to HCIDLA.)

18 15. AHF's appeal informed HCIDLA and the Mayor's Office that all evidence of
19 noncompliance and violation of the City's legal obligations was solely in the possession of
20 HCIDLA and the Mayor's office and that (i) AHF was submitting a public record request to
21 HCIDLA seeking relevant documents related to the RFP process and (ii) AHF would supplement
22 its appeal after obtaining and reviewing responsive materials. (Attached as **Exhibit "D"** is a true
23 and correct copy of AHF's August 27, 2019 request for public records.)

24 16. On September 4, 2019, AHF received a response to its records request from
25 HCIDLA stating that the "RFP was managed by the Mayor's Staff, although our Land Development
26 Unit in HCIDLA assisted with the release of the HHH Innovative Housing Challenge RFP and
27 threshold review, but all documents following the initial threshold review are held by the Mayor's
28 team. Consequently, please contact the Mayor's office for records." (Attached as **Exhibit "E"** is a

1 true and correct copy of the September 4, 2019 correspondence from HCIDLA.)

2 17. Immediately on September 4, 2019, AHF dutifully submitted a request for public
3 record to the Mayor's Office, again noting that the request was related to an RFP appeal and
4 stressing that all evidence of noncompliance and violation of the City's legal obligations was
5 solely in the possession of the City. (Attached as **Exhibit "F"** is a true and correct copy of
6 AHF's public record request submitted to the Mayor's Office on September 4, 2019.)

7 18. On September 16, 2019, AHF received a terse response from the Mayor's Office
8 stating only that "[it] is our policy not to disclose materials related to competing bids while the
9 contracting process is still ongoing." Notably, the Mayor's Office did not cite any sections of the
10 California Public Records Act ("CPRA") as justification for withholding obviously public
11 records. (Attached as **Exhibit "G"** is a true and correct copy of the correspondence received
12 from the Mayor's Office on September 16, 2019.)

13 19. To date, AHF has received only a handful of relevant documents from the City
14 and has filed a writ with the Los Angeles Superior Court seeking an order forcing the City to
15 comply with the CPRA and to produce the requested public records to AHF.

16 20. While stonewalling AHF's efforts to obtain relevant public documents that would
17 allow it to prosecute its appeal, the City summarily dismissed AHF's appeal via letter dated
18 September 12, 2019, stating in part that there was "no basis for the claim that the processes used
19 to review, score, and award funds violate the reasons, criteria, and categories set forth in the
20 RFP"—despite the fact that any evidence of such illegal conduct was solely in the City's
21 possession and control and deliberately withheld from AHF. (Attached as **Exhibit "H"** is a true
22 and correct copy of the correspondence received from HCIDLA on September 16, 2019.)

23 21. The Los Angeles City Administrative Code imposes requirements on the City
24 when it undertakes a competitive bidding process. Specifically, the City is required to comply
25 with Division 10, Chapter 1, Article 2 of the Administrative Code (Procedure and Requirements
26 for Competitive Bidding on City Contracts, which states that when not making an award to the
27 lowest bidder:

28 **§10.15 Competitive Bids.**

(f)(7) Proposals shall be evaluated on the basis of compliance with the RFP requirements and the merits of the proposal rather than comparing one proposal against another. Only the evaluation criteria stated in the RFP will be considered in the evaluation of proposals.

And

(f)(11) Award shall be made to the proposer whose proposal is most advantageous to the City, except that the Purchasing Agent or his or her representative, or in the case of the Departments of Airports, Harbor and Water and Power the General Managers or their representatives may reject any or all offers if rejection is in the best interest of the City. The contract file shall state in writing the basis on which the award is made. No award may be made pursuant to this alternative method to a proposer whose final proposal is higher as to the ultimate cost to the City, as defined in City Charter section 371, and if such can be determined, than any other proposal submitted.

The Procurement Process for the RFP Fails to Comply with City Regulations

22. L.A. Admin. Code § 10.15(f)(7) requires that proposals for competitive bids be “evaluated on the basis of compliance with the RFP requirements and the merits of the proposal rather than comparing one proposal against another.” Yet, the City’s procurement process for the RFP is rife with arbitrary actions that are in direct contravention of its obligations.

23. On September 18, 2019, Jennifer Kim, the Housing Innovation Program Director for HCIDLA met with AHF staff to discuss the supposed deficiencies in AHF’s proposal, and the explanations offered to AHF demonstrate that the City failed to follow L.A. Admin. Code § 10.15(f)(7).

24. First, the City asserts that it was concerned about AHF’s perceived lack of experience as a developer, and Ms. Kim acknowledged that the City compared AHF’s perceived experience to other bidders. This approach directly violates L.A. Admin. Code § 10.15(f)(7)—the City is obligated to assess AHF’s proposal only against the RFP requirements and cannot do so by “comparing one proposal against another.”

1 25. Second, the City was supposedly concerned about whether AHF anticipated the
2 challenges involved in developing a 15-story modular, residential tower that relies on an untested
3 typology. However, the very purpose of the RFP is to provide support for “innovative housing
4 production and/or financial models,” and that’s precisely what AHF proposed. To penalize AHF
5 proposing precisely what the RFP seeks is clearly a violation of L.A. Admin. Code §
6 10.15(f)(7)—the City’s assessment of AHF’s proposal is limited to the four corners of the RFP
7 itself, and the City deviated from this requirement.

8 26. Third, L.A. Admin. Code § 10.15(f)(11) requires the City to select proposals that
9 are the “most advantageous,” yet the City has failed to do so. The City received 19 applications
10 in response to the RFP and selected a subset of those proposals for support/funding. The City
11 has made no showing, nor even an attempt to show, that its selections are the most advantageous
12 for the citizens of Los Angeles.

13 **AHF Exhausted Its Administrative Remedies Prior to Bringing This Action**

14 27. Appeal rights are addressed by Section III, E. of the RFP which indicates that the
15 only appeal available to aggrieved bidders is to HCIDLA itself.

16 28. In accordance with the RFP requirements, AHF appealed the City’s decision via
17 letter delivered to HCIDLA on August 27, 2019. The City denied AHF’s appeal on September
18 12, 2019.

19 29. The City does not permit any further appeal or adjudication. At this point, AHF
20 has performed any and all conditions precedent to the filing of this lawsuit by participating in
21 and exhausting all phases of the administrative process. No administrative remedies short of
22 court intervention exist for AHF.

23 **FIRST CAUSE OF ACTION**

24 (Writ of Mandate against the City of Los Angeles)
25 (Code Civ. Proc., §§ 1085 and 1086)

26 30. Petitioner re-alleges and incorporates by reference the allegations set forth in
27 paragraphs 1 through 28 above.

28 31. The City of Los Angeles has a duty to adhere to its regulations when engaging in
competitive bidding for award of City funds.

32. The City failed to adhere to the Los Angeles Administrative Code in its procurement process for the RFP as detailed above.

33. AHF seeks to compel the City to adhere to its own regulations, including L.A. Admin. Code § 10.15 *et. seq.*, in awarding funding under the RFP.

34. AHF has no plain, speedy, or adequate remedy at law in that the City is proceeding to award funds under the RFP in a manner inconsistent with the requirements outlined by the City's own regulations.

35. If this writ is not issued AHF will be harmed in that AHF will denied City funds it would be entitled to receive had the City followed proper procedure.

36. This petition for writ of mandate is timely filed pursuant to section 1085 of California Code of Civil Procedure.

SECOND CAUSE OF ACTION
(Writ of Mandate against the City of Los Angeles)
(Code Civ. Proc., § 1094.5)

37. Petitioner re-alleges and incorporates by reference the allegations set forth in paragraphs 1 through 35 above.

38. AHF challenges the decision made by the City in not awarding any funds to AHF under the RFP. The City acted arbitrarily and capriciously in its procurement process for the RFP because it has a duty to adhere to its own regulations when engaging in competitive bidding for award of City funds. The funding for RFP is City funds obtained through bonds issued pursuant to Proposition HHH. Accordingly, the City of Los Angeles was at all times relevant to this Complaint required to adhere to its own regulations on competitive bids, including L.A. Admin. Code § 10.15.

39. The City failed to adhere to these regulations in its procurement process for the RFP, as detailed above, and the City abused its discretion in the choosing to proceed in a procurement process that violated City law.

40. The City's decision was also unreasonable, arbitrary, and a prejudicial abuse of discretion in that the supposed deficiencies in AHF's proposal are not supported by substantial evidence.

41. The City's determination resulted from conduct that directly violated the procurement requirements of L.A. Admin. Code § 10.15 in that the City employed standards outside of the RFP itself to evaluate AHF's proposal and compared AHF's responses directly to other bidders in contravention of explicit regulations prohibiting such action.

42. Had the City not acted in an arbitrary and capricious manner and followed the established criteria for conducting a competitive bidding process, AHF would have been awarded funding under the RFP.

43. This petition for administrative writ was timely filed pursuant to section 1094.5 of California Code of Civil Procedure.

PRAYER FOR RELIEF

WHEREFORE, Petitioner pray for judgment as follows:

1. That this Court issue a writ of mandate commanding the City of Los Angeles to set aside its decision denying funding to AHF under the RFP and have the City reconsider whether an award of funds for AHF under the RFP is proper in light of the requirements imposed on it under City law;

2. That this Court issue an administrative writ to set aside the City's decision denying funding to AHF under the RFP and have the City reconsider the evidence favoring an award of funding to AHF under the RFP;

3. That this Court award AHF its costs and attorneys' fees; and

4. That this Court grant AHF such other, different, or further relief as the Court may deem just and proper.

DATED: December 16 2019

Respectfully Submitted,

AIDS HEALTHCARE FOUNDATION

By Tom Myers
Arti L. Bhimani
Attorneys for Petitioner

1 VERIFICATION

2 I, Michael Weinstein, declare:

3 I am President of AIDS Healthcare Foundation (AHF) and a Los Angeles County taxpayer.

4 I am authorized to make this verification for Petitioners/Plaintiffs.

5 I have read the foregoing Amended Verified Petition for Writ of Mandate and
6 Administrative Writ and know the contents thereof. Said contents are known to me to be true
7 except those matters alleged on information and belief, and as to those matters I believe them to
8 be true.

9 I declare under penalty of perjury that the foregoing is true and correct.

10 Executed this 16th day of December, 2019 at Los Angeles, California,

11 
12 _____

13 Michael Weinstein
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PROOF OF SERVICE

I, Blake Wilding, declare that:

I am employed in the County of Los Angeles, State of California. I am over the age of 18, and am not a party to this action. My business address is 6255 W. Sunset Blvd., 21st Fl., Los Angeles, CA 90028.

On December 16, 2019 I served:

**AMENDED VERIFIED PETITION FOR WRIT OF MANDATE AND
ADMINISTRATIVE WRIT**

in said cause addressed as follows:

Deborah Jeanne Breithaupt
Deputy City Attorney IV
Los Angeles City Attorney's Office
200 N. Spring Street, 21st Floor
Los Angeles, CA 90012-1780
Phone: (213) 922-8382
Fax: (213) 978-7957
Email: debora.breithaupt@lacity.org

☒ BY MAIL:

☐ I deposited such envelope in the mail at Los Angeles, California. The envelope was mailed with postage thereon fully prepaid.

☒ As follows: I am "readily familiar" with the company's practice of collecting and processing correspondence for mailing. Under that practice it would be deposited with U.S. Postal Service on that same day with postage thereon fully prepaid at Los Angeles, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

☐ BY FEDERAL EXPRESS OR OTHER OVERNIGHT DELIVERY SERVICE

☐ BY FACSIMILE SERVICE

I delivered such document by facsimile service to the offices of the addressee.

☐ BY PERSONAL SERVICE

I arranged for a messenger to deliver such envelope to the offices of addressee.

☐ BY ELECTRONIC SERVICE

I electronically served a true and correct copy of the document listed above by transmission to Case Anywhere by uploading it to the Case Anywhere website pursuant to the instructions on that site. According to the Court's Order re: Electronic Service, the document will be deemed served on the date that it was uploaded to the website as indicated by the Case Anywhere system.

By:


Blake Wilding